

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 1069 of 1999****with****CIVIL APPLICATION NO. 3786 OF 1999****with****CIVIL APPLICATION NO.14380 of 1999****with****CIVIL APPLICATION NO. 9506 OF 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

INDIAN OIL CORPORATION - Petitioner(s)**Versus****SECRETARY - GUJARAT PETROLEUM EMPLOYEES UNION -
Respondent(s)**

=====

Appearance :

MR KEYUR GANDHI for Petitioner

MR TR MISHRA for Respondent

=====

CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 07/08/2007****ORAL JUDGMENT**

Shri Keyur Gandhi, learned counsel for the petitioner; Shri T.R. Mishra, learned counsel for the respondent.

2. The petitioner, being aggrieved by the award dated 6.10.98 passed by the Presiding Officer, Special Labour Court, Ahmedabad in Reference [L.C.I.D.A.D.] No. 83 of 1997 [old Reference [L.C.A.] No. 215 of 1982] is before this Court with a submission that the learned Labour Court went beyond the terms of the Reference and further erred in making the award in favour of the workman.
3. To properly appreciate the case, this Court is required to make straight the detailed history and crease out the wrinkles which are creating unnecessary shadows over the rights of the parties.
4. Raman Punja and number of others were working for the Indian Oil Corporation ["Corporation" for short], it was said by the workmen that they were in fact employed by the Corporation but to avoid liabilities under the Labour Laws, they were shown to be employees of the Contratractor,

namely, one Mr. Sudalai; number of workmen were absorbed and were employed by the Corporation, however, some of the workmen, feeling aggrieved by the conduct of the Corporation filed a Complaint [IT] No. 149/81 before the Industrial Tribunal. In the said complaint, grievance of the present respondent Raman Punja was that though he had been working with the Corporation but no permanent status is being offered to him. Number of others, who were party to the Complaint [IT] No. 149/81 were absorbed by the Corporation, therefore, they did not press their complaint, however, an agreement was arrived at between Raman Punja – the workman, IOC-alleged employer and M/s. S.S. Corporation [owned by Mr. Sudalai] that without prejudice to the contentions of the parties, the Contractor agrees to give work to the complainant Raman Punja; the services of Raman Punja with the Contractor would be treated as continuous but he would not be paid any wages/compensation for the intervening period of unemployment. It was specifically agreed between the parties that no

relief was being pressed against the Corporation [IOC]. It was agreed between the parties that the complaint in respect of Raman Punja was not pressed. In accordance with the terms of the settlement and the compromise, Raman Punja withdrew his case and accepted the offer made by M/s. S.S. Corporation and gave up his rights against the Corporation. This was somewhere on 28.9.84. Even when Complaint [IT] No. 149/81 was pending consideration, Secretary, Gujarat Petroleum Employees' Union had requested the appropriate government to make a Reference to the appropriate Labour Court for consideration of the charter of demands. Number of questions were raised, however, one of the complaint was in relation to item no.3 of the charter of demands, which reads as under:-

"3. All the casual contract workmen who have put continuous service for the period more than 240 days, should be made permanent and the recruitment of the casual workmen should be made through the local market and local employment exchange."

5. The Reference was accordingly made and the parties were allowed to file details of their claim, written statement etc. It appears that during the course of the recording of evidence, Raman Punja was examined, some other witnesses were also examined for and on behalf of the Union and, some employees/officers from the side of the Corporation were also examined. Raman Punja, in his statement simply stated that offer of employment made by the Contractor was camouflage; in fact, he was working for and was employed by the Corporation however, he did not say that under what circumstances he had withdrawn his case filed against the Corporation registered as Complaint [IT] No. 149/81. The Corporation also examined its officers; the said officers were thoroughly cross-examined; not even a single question was put to them that under what circumstances, compromise dated 28.9.84 came to be recorded.
6. After hearing the parties, the learned Labour Court allowed the Reference and issued certain directions. While considering demand no.3 quoted

above, it was directed that Raman Punja who had put in more than 240 days of work and who was the only workman in the service of permanent nature in the Corporation should be given designation akin to the permanent workmen according to his work; that he shall be included in the permanent strength, that he shall be treated in the category of permanent workman from 1.1.85 and shall be paid other salary. The Corporation, being aggrieved by the said award is now before this Court.

7. Shri Keyur Gandhi, learned counsel for the petitioner submitted that the learned Court below was absolutely unjustified in enlarging the scope of the Reference; it also erred in personalizing demand no.3 which was in the nature of general demand; that the learned Labour Court erred in not appreciating that the earlier withdrawal of the claim against the Corporation would be *res judicata* and the parties would be bound by the said compromise. In the alternative, it is submitted that the workman is estopped by his conduct; he cannot

now be allowed to say that he continued to be workman with the Corporation. It is further submitted that so long as the earlier compromise and the order stand, the workman would not be allowed to say anything contrary to it.

8. Shri Mishra, learned counsel for the workman, after reading the statement of Raman Punja and the officers of the Corporation submitted that present is a case where the Corporation was engaged in unfair labour practices; the earlier matter had to be withdrawn because the workman was poverty-stricken; he was compelled under the circumstances and as he was on the roads and had no bread, he had to succumb to the illegal demands made by the Corporation and the Contractor. Placing reliance upon certain judgments of the Supreme Court, it was submitted that principles of estoppel and *res judicata* are questions of technical nature and such technicalities cannot be allowed to overshadow the rights of the parties. He also submitted that from the conduct of the parties, it had come on the records that the present petitioner

was engaged in unfair trade practices and the present respondent was the only unfortunate person who was not absorbed by the Corporation and was also not offered status of a permanent employee. Undisputedly, demand no.3 on which Reference was made was not in relation to Raman Punja; demand simply was that all the casual contract workmen who had put in continuous services for a period of more than 240 days should be made permanent and, the recruitment of the casual workmen should be made through local market and local employment exchange. There is no mention of Raman Punja in this demand. The demand simply said that the casual contract workmen who have put in continuous service for a period of more than 240 days should be made permanent. If this was the demand, presumption was that the workmen who were working with the establishment for more than 240 days were required to be made permanent. Demand no.3 never said that The person who is not on the rolls or in the employment of the Corporation should also be made permanent. Permanent status was sought

for people who had worked for more than 240 days and were also casual contract workmen.

9. It is to be seen that earlier compromise dated 28.9.84 was absolutely in unambiguous terms; workman Raman Punja clearly and unambiguously stated that he was not pressing any relief against the Corporation; he was happy and content with the offer made to him by Shri Sudalai of M/s. S.S. Corporation; that the Contractor was giving work to the complainant. If such was the conduct of the workman and such was the compromise between the parties, then, such conduct of the workman and the compromise entered into between the parties shall bind the parties. Relying upon the conduct of the workman, if the parties have come to certain terms or have settled their dispute, then, the workman would not be allowed to say that under the compelling circumstances and pressing requirement of bread, he had succumbed to the illegal demands. Assuming that the workman had surrendered to the illegal demands, then, he was required to make an application before the

Labour Court or before the higher Court that he was compelled to enter into such compromise. If such compromise was acted upon and the workman had enjoyed the fruits of the said compromise, then, at a later stage, he cannot be allowed to say that the compromise does not bind him.

10. Section 11 of the Code of Civil Procedure may not apply in its strict sense to these proceedings but the principles underlying Section 11 would always apply. The Courts always require a person to come out of its conduct first and then make an allegation against others. The Court also requires a person to satisfy the Court that why earlier order between the same parties would not be binding upon the parties. The reasons for application of the principles of estoppel and *res judicata* are to avoid legal anarchism and judicial uncertainty. If it is held by the Court that principles of *res judicata* at all would not be applicable, then, it will provide a lever and handle in the hands of a party who loses before a particular Court. Undeterred and

undaunted by the dismissal of the earlier case, the claimant would again come to the very same Court and would ask the other parties to start afresh. If such proceedings are allowed and the proceedings go on *ad infinitum* would it not lead to legal anarchism, would it not disturb the sanctity of an award or a judgment made by the Court, would it not lead to judicial uncertainty.

11. Shri Mishra, placing reliance upon the judgment of the Supreme Court in the matter of *Workmen of the Straw Board Manufacturing Company Limited v. M/s. Straw Board Manufacturing Company Limited* [1974 [1] LLJ 499], submitted that the principles of *res judicata* as enshrined in the Code of Civil Procedure would not be applicable. The Apex Court, in the above judgment observed that;

“appellants contend that in certain previous awards two unions were held to constitute one establishment and the said awards operated as res judicata.”

"It is now established that, although Civil Procedure Code is not applicable to industrial adjudication the principles of res judicata laid down in Section 11 are applicable wherever possible for very good reasons to avoid multiplicity of litigation. But the Court must consider whether the dispute in the subsequent case had earlier had been directly and substantially in issue between the same parties and the same had been heard finally decided for the principle of res judicata to apply."

12. Shri Mishra submitted that in the earlier matter, there was no adjudication of the rights but the matter was disposed of on compromise, therefore, earlier order would not operate as *res judicata*. I am sorry to record my disagreement. In the earlier matter, the question directly and substantially in issue was that whether Raman Punja was employed by the Contractor or was employed by the Corporation. The parties entered into a compromise, the complainant Raman Punja did not press his complaint against the Corporation, did not seek

any relief, gave up all his rights which he was claiming against the Corporation and satisfaction of the workman Raman Punja was recorded on the terms that the Contractor M/s. S.S. Corporation would provide him labour work. If this was the compromise entered between the parties and the present workman had withdrawn his claim which he had earlier raised against the Corporation, then, such order passed by the Court, wherein the Court was dismissing the claim of the workman Raman Punja against the Corporation, would amount to *res judicata*.

13. Even otherwise, the respondent would be estopped by its conduct. Estoppel by conduct is a principle which does not allow a party to say something contrary to his conduct. A person would be entitled to say anything unless he has assured the other party that he would not say something against the party. In the present matter, the workman Raman Punja entered into compromise, persuaded the Corporation to affix their signatures on the compromise application and assured them that he would not claim any

relief against the Corporation. If such assurance was not given by the workman Raman Punja, probably, decision of the matter would have been something different. In the said matter, the workman had the fullest opportunity to prove that the arrangement between the industry and the Contractor was sham and bogus, was to avoid liability under the Labour Laws and in fact, industry was employing people in the name of the Contractor. If it was not so done and the workman persuaded the Corporation to accept the stand of the workman, then, the conduct exhibited by the workman would stare in his own eyes and anything said contrary to the earlier conduct would be in the teeth of the earlier compromise.

14. Shri Mishra also relying upon yet another judgment of the Supreme Court in the matter of *Workmen of Suborn Tea Estate v. Subong Tea Estate and another* [1964 [1] LLJ 333] submitted that in the said matter, on an earlier occasion, retrenchment allowance was paid to the workmen which they had accepted and even in view of the

said acceptance, the workmen were allowed to say that they were illegally retrenched. The facts of the said case were absolutely different. In the said case, industry was sold by the erstwhile owner in favour of the vendee. The erstwhile owner asked the workmen to accept the retrenchment compensation; the workmen had contended before the Court that under the compelling circumstances, they were required to accept the compensation and the very next day of receiving the compensation they had raised their voice that the erstwhile owner had exercised duress and coercion upon them. The Supreme Court in the said matter held that on the facts of the said case, there was nothing like estoppel. The Supreme Court also observed that after the transfer of the industry, the erstwhile owner could not pay retrenchment compensation and undisputedly, new owner cum vendee did not pay retrenchment compensation. The observations made by the Apex Court in the matter of the Workmen of Subong Tea Estate were on the facts of the case. In the present matter, surprising facts

are that during pendency of the present Reference [LCA] No. 215/82 [New Reference [LCIDAD] No. 83 of 1987, the workman in his earlier Complaint [IT] No. 149/81 had withdrawn all his claims against the Corporation. When the workman knew that Complaint [IT] No. 149/81 and Reference [LCA] No. 215/82 were in relation to the same relief and withdrawal of one of the claim would seriously prejudice the other, then he was not required to enter into the compromise during pendency of the present Reference in the other matter wherein same issues were raised, if the workman had withdrawn his claim, then, his conduct would certainly bind him and put fetters on his submission that he was compelled by the circumstances.

15. Shri Mishra, after taking me through the statement of Raman Punja, submitted that Raman Punja had made categorical statement that he was compelled to enter into the compromise. I had repeatedly gone through the statement of Raman Punja and I am sorry to record that he does not say even a single word to explain that what

compelled him to withdraw his demands which were raised by him in Complaint [IT] No. 149/81.

16. Shri Mishra, learned counsel for the respondent, then, relied upon certain observations made by the learned Labour Court to submit that the Labour Court, after going through the evidence and after appreciating the circumstances flowing on the surface of the records has made certain observations which are absolutely apt and would clinch the issue. The Labour Court had observed as under:-

"Shri Raman Punjabhai by submitting purshis exh.18 in the Complaint [IT] No. 149/81 [Exh.15/3] made in the Reference [IT] No. 776/81 requested to reinstate him without back wages counting his past service continue. A settlement was arrived at. Consequently on reinstatement in service through M/s. S.S. Corporation, the Contractor of the first party he Raman Punjabhai withdrew his complaint and award part-1 was passed on 29.9.84. The original proceeding of complaint No. 149/81 has been produced in this case. From this proceeding it appears that Shri Raman Punjabhai had joined service as a casual labour in I.O.C.

in the year of 1972. His services were terminated from 1.12.81. In view of the above said facts, on reinstatement in the service he had withdrawn this complaint. In the said complaint, Shri Raman Punja has given deposition vide Exh. 8. In the said deposition he has stated that his presence was limited to the duty officer stores."

17. So far as the factual aspect is concerned, filing of Complaint [IT] No. 149/81 and Reference [IT] No. 776/81 are correct but the learned Labour Court, without having any material on the records, made observations that Raman Punja had joined the services as casual labour in the Corporation in the year 1972; that his services were terminated with effect from 1.12.81; that in view of the above said facts on reinstatement in the service he had withdrawn his complaint; that in the said complaint Raman Punja had given deposition vide exh. 8; that his presence was limited to the duty officer stores. It is unfortunate that the Labour Court had made such observations without any material on the records. The findings recorded by the Labour

Court are absolutely perverse. Perversity is writ large; perversity is floating on the surface of the records. In the compromise, Raman Punja never said that he would be taken back in the service of the Corporation. In fact, he had agreed to the terms that he would be provided service and work by M/s. S.S. Corporation. With open eyes and fair understanding, he withdrew his complaint against the Corporation; he did not press his charter of demands against the Corporation. The learned Labour Court, while observing that "on reinstatement in the service, he had withdrawn complaint" either for the reasons best known to him or for unknown reasons, did not see that complaint against the Corporation was not pressed and Raman Punja was to be reinstated by the Contractor.

18. Raman Punja cannot come out of his compromise.

The conduct exhibited by him would certainly bind him.

19. If Raman Punja was of the opinion that he was duped or fraud was played upon him in obtaining compromise in Complaint [IT] No. 149/81, then,

he should have made an application either to the same Court for withdrawal of the compromise and order, or should have challenged it before the higher Forum that the fraud was practiced upon him.

20. Shri Mishra, after taking me through the compromise submitted that the very opening words of the compromise show that it was entered into between the parties without prejudice to the contentions raised by the parties. He submitted that if the compromise was without prejudice to the contentions raised by the parties, nothing would forebear the petitioner from raising his submissions again. Unfortunately, the argument loses sight of the fact that the compromise does not use the language; "without prejudice to the rights of the parties". There is always a sharp and remarkable distinction between a right and a contention. Based upon a right, a contention is raised. If the contention is rejected, right would stand nullified. In the present matter, the parties were raising different contentions and they were trying to protect their rights in

this matter. The contention of the petitioner was that he was working with the Corporation but the moment he gave up his rights against the Corporation, the contention that he was a workman of the Corporation was not available to him. If right is not available to a party, then, the party would not be allowed to raise the contention and therefore, in the present case, even if there was compromise without prejudice to the contentions of the parties, the later part of the compromise would make it clear that the workman had given up all his rights in favour of the Corporation.

21. It was then submitted that nine out of ten contract labours have been taken into service and were offered permanent status but the present workman is the only unfortunate person and if this Court proposes to interfere in the matter, the workman would be on the roads. The argument though is pathetic and persuasive but it stands on quick sand, it appears to be lucrative but is shallow. The Court is not required to see that what would be the ultimate

consequence of a legal order, because, the Courts have decided in accordance with law. In a case where discretion has some role to play, the Court may soften punishment or may enlarge the relief but in a given case where law leaves no discretion in favour of a Court, then, the Court has to decide the matter in accordance with law.

22.The award directing reinstatement of the workman - Raman Punja, for the reasons aforesaid, is patently illegal, it deserves to and is accordingly quashed. Rule is made absolute accordingly.

23.Taking into consideration that the workman would be losing all what he got from the Labour Court, I award no costs.

24.In view of the final disposal of the matter, all Civil Applications filed in this writ application stand disposed of.

[R.S. GARG, J.]

pirzada/-